

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No.: 11-193(1)(DSD)

United States of America,

Plaintiff,

v.

ORDER

Charles Vincent Fletcher,

Defendant.

Thomas M. Hollenhorst, United States Attorney's Office, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415, counsel for plaintiff.

Charles Vincent Fletcher, #15900-041, FMC-Lexington, P.O. Box 14500, Lexington, KY 40512, defendant pro se.

This matter is before the court upon the application to proceed on appeal without prepayment of fees by defendant Charles Vincent Fletcher. A litigant who seeks to be excused from paying the filing fee for an appeal may apply for IFP status under 28 U.S.C. § 1915. See also Fed. R. App. P. 24(a). To qualify for IFP status, the litigant must demonstrate that he cannot afford to pay the full filing fee. 28 U.S.C. § 1915(a)(1).

Fletcher's IFP application indicates that he has insufficient assets to pay for the costs of an appeal. ECF No. 195, at 1-4. As a result, the court finds that Fletcher is financially eligible for IFP status. Even if a litigant is found to be indigent, however, IFP status will be denied if the court finds that the litigant's appeal is not taken in "good faith." 28 U.S.C. § 1915(a)(3). Good

faith in this context is judged by an objective standard and not by the subjective beliefs of the appellant. Coppedge v. United States, 369 U.S. 438, 444-45 (1962). To determine whether an appeal is taken in good faith, the court must decide whether the claims to be decided on appeal are factually or legally frivolous. Id. at 445. An appeal is frivolous, and therefore cannot be taken in good faith, "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Although the court remains fully satisfied that Fletcher's motion under 28 U.S.C. § 2255 was properly denied, his appeal is not frivolous, as that term has been defined by the Supreme Court. As a result, the appeal is considered to be taken in good faith for purposes of 28 U.S.C. § 1915(a)(3), and the IFP application will be granted.

Accordingly, based on the above, **IT IS HEREBY ORDERED** that Fletcher's application to appeal in forma pauperis [ECF No. 68] is granted.

Dated: December 1, 2016

s/David S. Doty
David S. Doty, Judge
United States District Court